IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 755 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ROOPSING CHANDRABHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 755 of 1996

MR JC SHETH for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 19/07/2001

ORAL JUDGEMENT

1. The appellant-accused has preferred this appeal against the judgment and order of conviction dated 26.8.96 passed by the learned Additional Sessions Judge

Panchmahals at Godhra whereby the appellant-accused came to be convicted for the offence punishable under Sections 324 and 325 IPC and sentenced to suffer R.I. for 6 months and to pay fine of Rs.200/- in default to further undergo one month's R.I. for offence under Section 324 IPC. He was sentenced to suffer 7 days S.I. and pay fine of Rs.100/-, in default, to further undergo S.I. for 3 days.

2. On 27.11.96 when the matter was placed before the learned Single Judge of this Court for admission the matter was straightway admitted and the appellant-accused was ordered to be enlarged on bail. While admitting the appeal the learned Single Judge also directed the Probation Officer to send his report to this Court on or before 31st December, 1996. Accordingly, the same is received.

3. In absence of the learned counsel for the appellant with the assistance of the learned A.P.P. Shri N.D.Gohil, this appeal is disposed of.

4. From the judgment and order of conviction and sentence passed by the learned Trial Judge, it appears that there was a dispute between the two real brothers regarding cultivation of the forest land. On appreciation of evidence the learned Trial Judge found the appellant-accused guilty for the lesser offence and accordingly convicted the accused for the offence under Sections 324 and 325 IPC and sentence as stated earlier.

5. Report of the Chief Probation Officer shows that the conduct of the the appellant-accused was otherwise good and he was not of quarrelsome nature. He was maintaining good relations with other village people.

6. The offence was committed on 17.7.95 i.e. almost 6 years before. There was a dispute regarding cultivation of the land between the two real brothers. In the heat of moment the incident took place. Having regard to the evidence on record it is difficult to disturb the finding of conviction recorded by the learned Trial Judge. However, considering the order passed by the learned Single Judge of this Court at the time of admission and the report dated 24.12.86 of the Chief Probation Officer, I am of the considered opinion that instead of releasing the appellant-accused on probation for a period of one year the ends of justice would be served by setting aside the substantive order of sentence of six months for the offence under Section 324 IPC and 7 days S.I. for the offence under Section 325 IPC. On the

peculiar facts of the case the learned A.P.P. Shri N.D. Gohil has also no objection if this order is passed by maintaining the order of fine imposed by the Trial Court.

7. In view of the above discussion the judgement and order of conviction passed by the learned Trial Judge convicting the appellant-accused for the offence under Section 324 and 325 IPC is hereby confirmed. Further the substantive sentence of 6 months R.I. imposed for the offence under Section 324 IPC and 7 days S.I. for the offence under Section 325 IPC is hereby quashed and set-aside. However the order of fine of Rs.200/- for the offence under Section 324 IPC and fine of Rs.100/- for the offence under Section 325 IPC is hereby maintained. If the fine is not paid so far then the appellant-accused shall pay the same within three months from today before the Trial Court failing which he will have to undergo sentence as awarded by the Trial Court.

The appeal is partly allowed to the aforesaid extent only on the point of sentence. Bail bonds of the appellant stands hereby cancelled.

19.7.2001. (B.J. Shethna, J.)

/phalguni/